

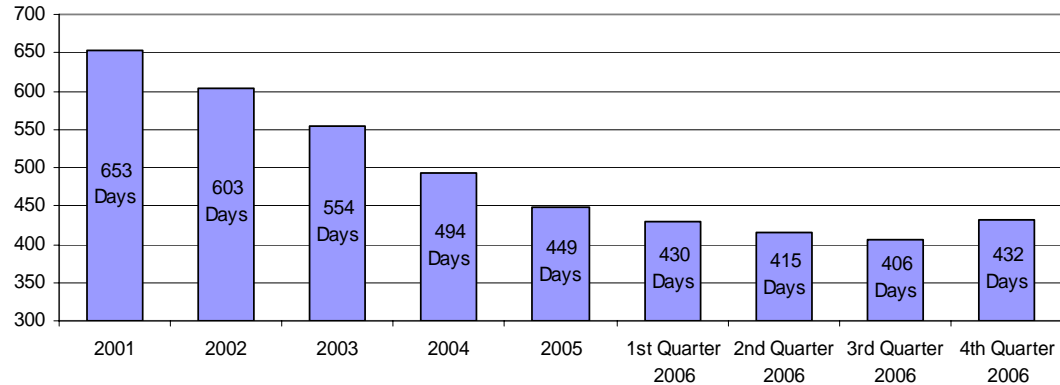
Testimony
Chief Judge William C. Whitbeck
Michigan Court of Appeals
March 8, 2007
Judiciary Subcommittee, Senate Appropriations Committee

Good afternoon and thank you for this opportunity to address the Subcommittee on behalf of the Court of Appeals. I know that each of you has had considerable experience in dealing with budgets that are much larger than that of our Court. The Legislature deals routinely with hundreds of millions—indeed, billions—of dollars, while we project our Court’s expenditures for FY 2007 to be \$19.6 million. Adjustments to our budget therefore are measured in hundreds of thousands, not hundreds of millions, of dollars. Proportionately, however, these adjustments are of great importance to us as they have a very direct and very significant impact on our operations.

With that in mind, let me highlight the following points. My full testimony is attached.

- *Filings And Dispositions* While filings with and dispositions by the Court have decreased from 1990’s levels, the difficulty of its opinion cases, as measured by the case day evaluations, has increased substantially.
- *Efficiency* In recent years the Court’s efficiency, as measured by expenditure per disposition, has increased.
- *Productivity* Similarly, the court’s productivity, as measured by dispositions per full-time equivalent employee, has increased.
- *Delay Reduction* Since 2002, the Court has reduced the average time it takes to dispose of opinion cases by over 35% and has increased the percentage of all cases it decides within 18 months of filing from 66.92% to 86.30%.
- *Budgetary Constraints* The Court has made this progress despite significant budgetary constraints. From FY 1999 through FY 2006, the cumulative increase in the Court’s budget was 12.24%. During the same time period, the cumulative increase in inflation was 25.87% and the cumulative increase in overall state spending was 34.27%.
- *The Fourth Quarter Regression* Further, the Court’s remarkable progress on delay reduction now stands in jeopardy. In the fourth quarter of 2006, the Court actually *regressed* with respect to delay reduction. As the chart below shows, on average it took 406 days to decide opinion cases in the third quarter of 2006 while in the fourth quarter in took 432 days. This regression is directly attributable to the actions that the Court was required to take in order to balance its budget for FY 2007.

The Fourth Quarter Regression



- *FY 2008 Budget* The Court proposes the following incremental increases from FY 2007 appropriation levels:

- Base Case Increases: \$559,088
- Retirement and Insurance Cost Increases: \$248,855
- Fill Vacancies: \$473,893
- Contract Attorneys: \$250,000

The chart below compares these increases with the DMB proposed budget:

COA REVISED BUDGET

	<u>DMB Budget</u>	<u>COA Proposed Budget</u>
Gross Appropriation	20,236,400	21,147,536
Special Revenue	0	0
Court Filing/Motions	1,958,500	1,958,500 ¹
Misc Revenue	77,800	77,800
Contract Attys GF/GP	0	250,000
GF/GP	18,200,100	18,861,236
Total Sources	20,236,400	21,147,536
Projected Expenditures	20,897,536	20,897,536 ²
Shortfall	(661,136)	250,000

¹ Includes elimination or delay of the extension of sunset provisions that will reduce the fees charged for motions.

² Not including separate, permanent and full funding of the contract attorney program.

I. Introduction

Any realistic appraisal of the Court of Appeals' budgetary needs for FY 2008 must begin with an examination of three interrelated factors: *first*, case filings and dispositions over time; *second*, recent operations of the Court as those operations relate to productivity and efficiency; and *third*, the Court's delay reduction progress over the last several years.

II. Case Filings And Dispositions Over Time

There has been a marked change in filings with and dispositions by the Court over the last two decades. Filings per Judge and dispositions per Judge, although influenced by the addition of new Judges, followed the same pattern. From 1986 to 1992, filings with the Court increased by approximately 68%. During the same time period, filings per Judge increased by approximately 26% and dispositions per Judge increased by approximately 33%. However, from 1992 to 2005, filings with the Court decreased by approximately 43%. During the same time period, filings per Judge decreased by approximately 51% and dispositions per Judge decreased by approximately 42%. In part, this decline resulted from the constitutional amendment that abolished appeals of right following guilty pleas, in part it resulted from the effects of tort reform, in part it may have resulted from an increasingly strong economy during the 1990s, and in part it may signal at least the beginnings of a change in societal attitudes toward litigation.

However, during the same time period, the opinion cases that litigants filed with the Court became more difficult. One of the ways in which the Court evaluates the difficulty of a case is by determining how many days it should take a research attorney to prepare a research report in an opinion case; this is called a case day evaluation. The Court has tracked statistics as to case day evaluations since 1992. Chart 1 shows the annual averages since that time and demonstrates that the cases have increased in difficulty as measured by the case day evaluations.

Chart 1
Case Difficulty

Year	Average Day Evaluation of Cases
1992	3.02
1993	3.49
1994	3.33
1995	3.49
1996	3.72
1997	3.94
1998	3.84
1999	4.09
2000	4.43
2001	4.42
2002	4.57
2003	4.31
2004	3.99
2005	3.97
2006	4.19

On a percentage basis, this increase is significant. The difference in average days spent preparing research reports from 3.02 days in 1992 to 4.19 days in 2006 represents a 39% increase. Therefore, at least arguably, opinion cases were approximately 39% more difficult in 2005 than they were in 1992.

III. Recent Operations Of The Court Of Appeals

A. Filings And Dispositions

As Chart 2 shows, in recent fiscal years, the number of filings and dispositions has remained considerably more constant than in earlier years. Further, the number of dispositions has exceeded the number of filings and, therefore, the Court's clearance rate has exceeded 100%.

Chart 2
Filings and Dispositions

	Filings	Dispositions	Clearance Rate
FY1999	7855	8005	101.91%
FY2000	7598	7661	100.83%
FY2001	7027	7695	109.51%
FY2002	7244	7637	105.43%
FY2003	7277	7644	105.04%
FY2004	7115	7473	105.03%
FY2005	7481	7625	101.92%
FY2006	7952	8172	102.77%

B. Efficiency: Expenditure Per Disposition

As Chart 3 shows, from FY 1999 to FY 2006 the Court's expenditures per disposition—in industrial terms, its cost per unit produced—have *declined* when measured in 1999 dollars. Thus, the Court has become more efficient in recent years than in the past, due in large part to its emphasis upon delay reduction. Further, as Chart 4 shows, the Court's sources for these expenditures have shifted somewhat, toward a greater reliance upon fees than in the past.

Chart 3
COA Expenditure Per Disposition
In FY 1999 Dollars

	Dispositions	COA Expenditures	Expenditure Per Disposition	Expenditure Per Disposition (FY99 \$)
FY 1999	8005	\$16,903,454	\$2,112	\$2,112
FY 2000	7661	\$17,120,417	\$2,235	\$2,160
FY 2001	7695	\$17,831,068	\$2,317	\$2,182
FY 2002	7637	\$17,828,959	\$2,335	\$2,166
FY 2003	7644	\$17,140,561	\$2,242	\$2,033
FY 2004	7473	\$17,100,800	\$2,288	\$2,023
FY 2005	7625	\$18,121,800	\$2,377	\$2,008
FY 2006	8172	\$18,803,000	\$2,301	\$1,904

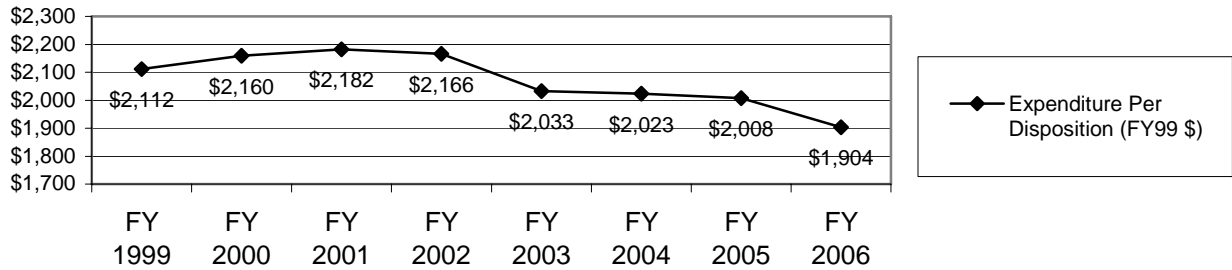


Chart 4
Sources of Expenditure Per COA Disposition

	Dispositions	COA Expenditures	Expenditure Per Disposition	GF/GP	GF/GP Per Disposition	% GF/GP Per Disposition	Fees	Fees Per Disposition	% Fees Per Disposition
FY 1999	8005	\$16,903,454	\$2,112	\$15,351,200	\$1,918	90.81%	\$1,552,254	\$194	9.19%
FY 2000	7661	\$17,120,417	\$2,235	\$15,624,700	\$2,040	91.28%	\$1,495,717	\$195	8.72%
FY 2001	7695	\$17,831,068	\$2,317	\$16,530,700	\$2,148	92.71%	\$1,300,368	\$169	7.29%
FY 2002	7637	\$17,828,959	\$2,335	\$16,464,700	\$2,156	92.33%	\$1,364,259	\$179	7.67%
FY 2003	7644	\$17,140,561	\$2,242	\$15,798,300	\$2,067	92.19%	\$1,342,261	\$176	7.85%
FY 2004	7473	\$17,100,800	\$2,288	\$15,277,000	\$2,044	89.34%	\$1,823,800	\$244	10.66%
FY 2005	7625	\$18,121,800	\$2,377	\$16,088,000	\$2,110	88.77%	\$2,033,800	\$267	11.23%
FY 2006	8172	\$18,803,000	\$2,301	\$16,766,700	\$2,052	89.18%	\$2,036,300	\$249	10.82%

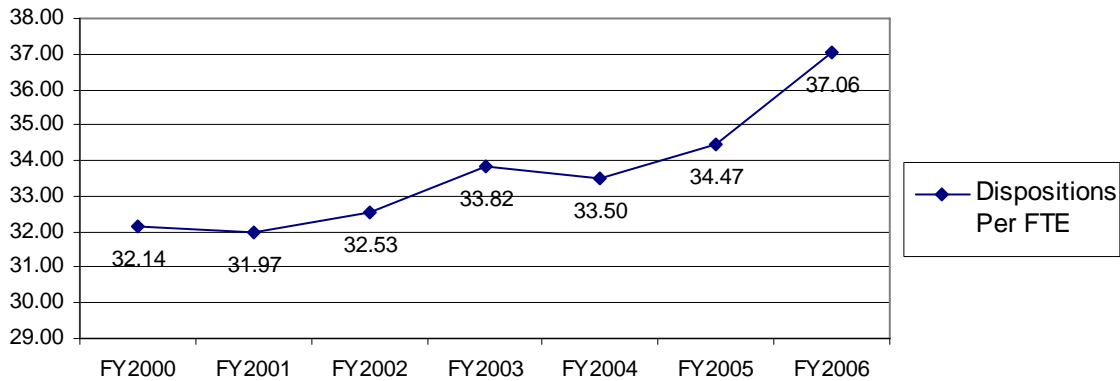
C. Productivity: Dispositions Per FTE

As Chart 5 shows, from FY 2000 to FY 2006 the Court's dispositions per full time equivalent (including Judges)—again in industrial terms, the Court's productivity per worker—have *increased*. Thus, the Court has also become more productive in recent years than in the past, due again in large part to its emphasis on delay reduction. It is fair to conclude that the Court has done a very good job in recent years in controlling its expenditures while at the same time increasing its efficiency and its productivity.

Chart 5
COA Dispositions Per FTE

	Dispositions	FTEs*	Dispositions Per FTE	% Increase/(Decrease) From Prior Year
FY2000	7661	238.4	32.14	
FY2001	7695	240.7	31.97	-0.17
FY2002	7637	234.8	32.53	0.56
FY2003	7644	226.0	33.82	1.29
FY2004	7473	223.1	33.50	-0.32
FY2005	7625	221.2	34.47	0.97
FY2006	8172	220.5	37.06	2.59

*Includes Judges



IV. Delay Reduction

In March of 2002, the Judges of the Court of Appeals unanimously adopted a delay reduction plan. That plan's long-range goal is to dispose of 95% of all of the Court's cases within 18 months of filing. As Chart 6 shows, the Court has made remarkable progress toward that goal. When the Court initiated its delay reduction efforts, it took 653 days on average to decide an opinion case. Currently, it takes 423 days on average. *This is a reduction of over 35%.* In the process, as Chart 7 shows, the Court has dramatically increased the percentage of cases that it decides within 18 months of filing. When the Court initiated its delay reduction efforts, this percentage was 66.92%. Currently, it is 86.30%. *This is an increase of almost 30%.*

Chart 6
Overall Time In Processing

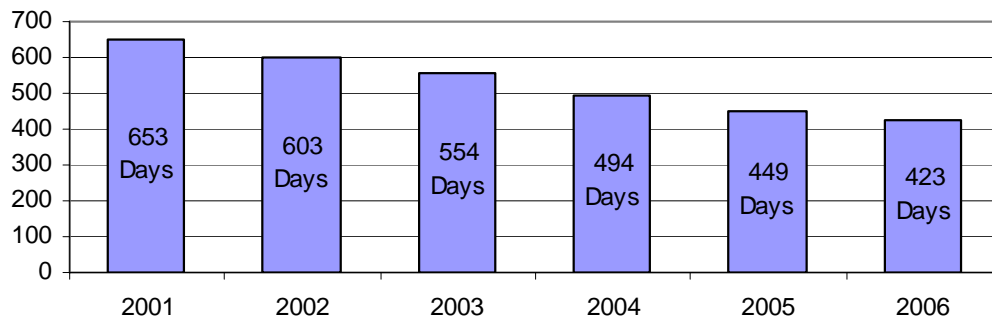
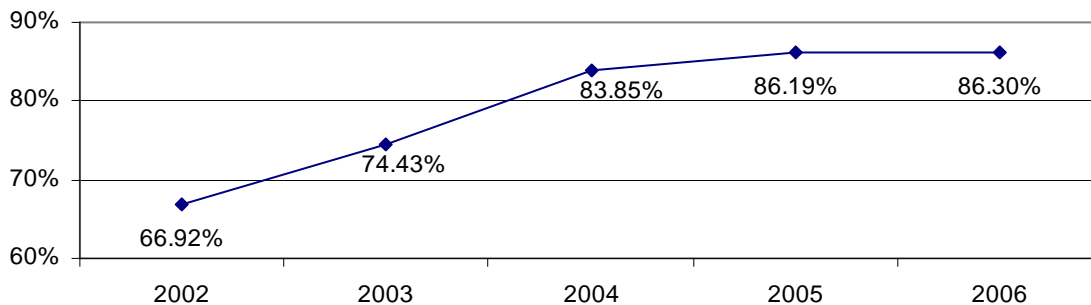
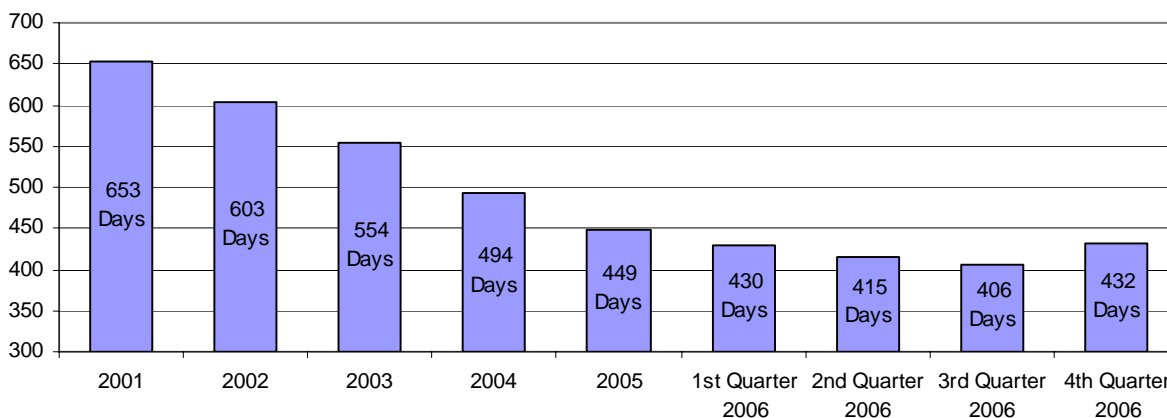


Chart 7
Percentage Of Cases 18 Months Old Or Less At Disposition



However, this remarkable progress now stands in jeopardy. In the fourth quarter of 2006, the Court actually *regressed* with respect to delay reduction. As Chart 8 shows, on average it took 406 days to decide opinion cases in the third quarter of 2006 while in the fourth quarter in took 432 days. This regression is directly attributable to the actions that the Court was required to take in order to balance its budget for FY 2007.

Chart 8
The Fourth Quarter Regression



V. Budget Proposals

A. Budgetary Constraints

It is also fair to say that the Court has achieved these improvements in its performance during periods of significant constraints with respect to its budget. From FY 1999 through FY 2006, the cumulative increase in the Court's budget was 12.24%. During the same time period, the cumulative increase in inflation was 25.87% and the cumulative increase in overall state spending was 34.27%.

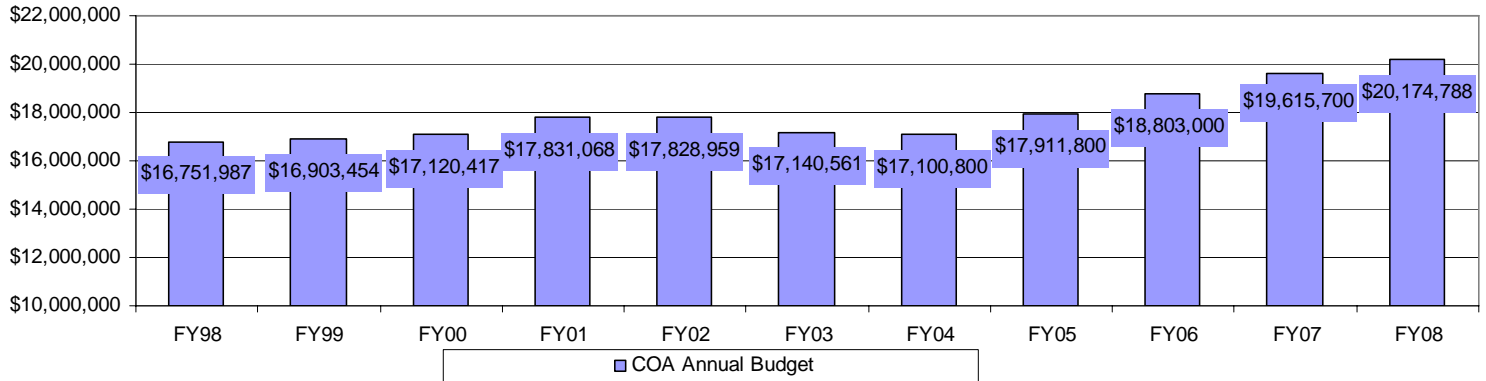
B. FY 2008 Budget

(1) Base Case: \$559,088 Increase

The Court's budget for FY 2007 is \$19,615,700. For FY 2008, the Court projects that its costs will *increase* by \$559,088, this amount includes the structural shortfall from FY 2007 and the cost of step increases, of two extra payroll days, and of other miscellaneous uncontrollable costs. Thus, *simply to stand still*, the Court's expenditures will increase by approximately 2.8% over FY 2007 levels. (See Chart 9).

Chart 9
Base Case Increases: Dollar Amounts

- Carry forward FY 07 \$165,000 deficit
- Step increases
- Two extra payroll days

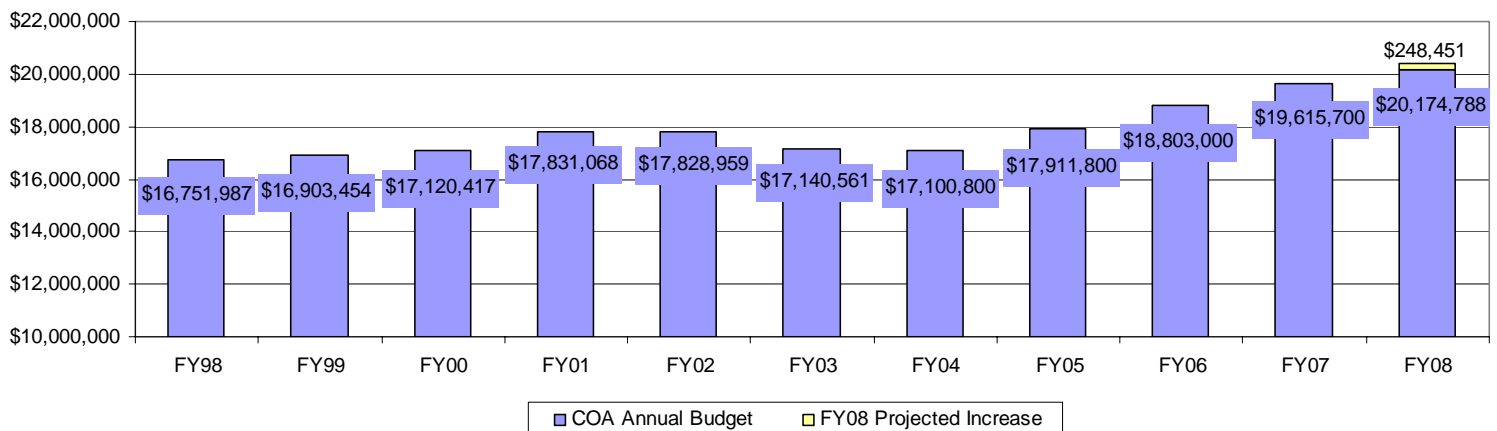


(2) Retirement And Insurance Cost Increases: \$248,855 Increase

The Court projects that in FY 2008 its defined benefit costs and its defined contribution costs will remain almost the same, and its insurance costs will increase by \$248,450 for a total cost increase of \$248,855 in FY 2008. The Court has no control whatsoever over these increases. With these increased costs, the cumulative expenditure increase will be approximately 4.12% over FY 2007 levels. (See Chart 10).

Chart 10
Base Case 1 Increases: Dollar Amounts

- Defined benefit costs decreased .18%
- Defined contribution costs increased .11%
- Insurance costs increased 10.8%

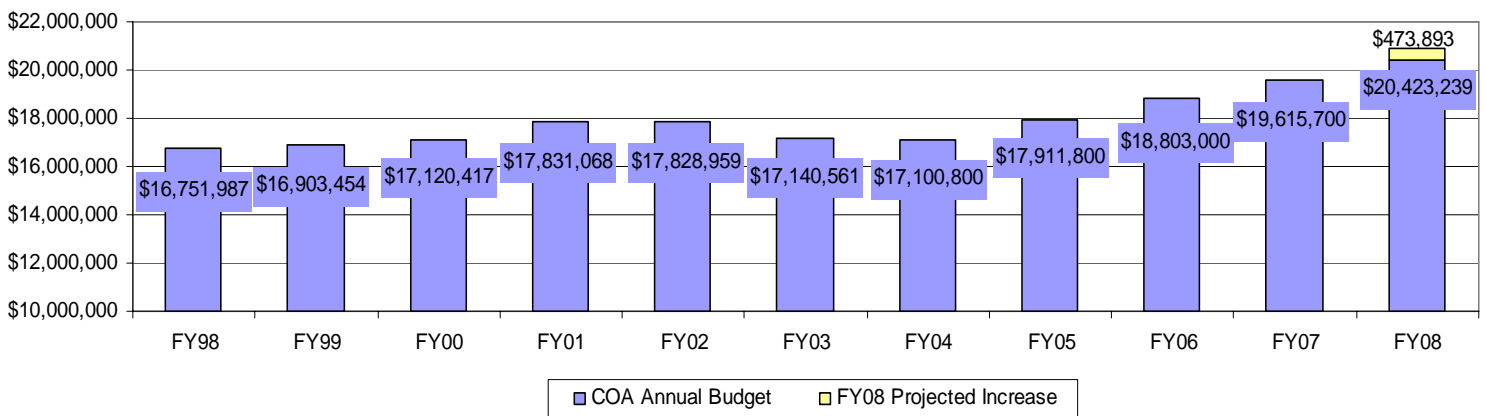


(3) Fill Vacancies

To fill the existing long-term vacancies at the Court – that is, those positions that the Court has held open in order to balance its budget in FY 2007 – will cost approximately \$473,893. With these increased costs, the cumulative expenditure increase will be 6.53% over FY 2007 levels. (See Chart 11).

Chart 11
Base Case 2 Increases: Dollar Amounts

- Fill Court vacancies
 - One senior research attorney
 - Two clerk III
 - Three prehearing attorneys



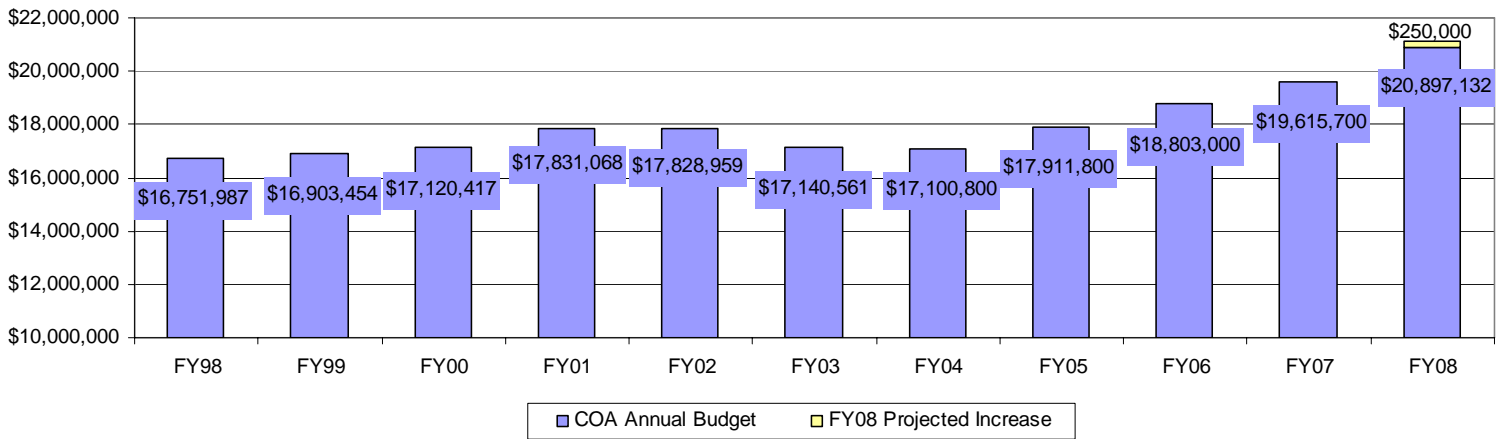
(4) Contract Attorney Program

Our Court pays special attention to appeals involving custody and termination of parental rights, collectively called dependency appeals. These cases involve urgent and important considerations relating to the welfare of children. Since 2001, we have cut the average time that it takes to dispose of these cases from 325 days to only 219 days in 2006. On that time, 122 days were spent in the Intake stage. The combined time for all other stages was 97 days, including only 20 days in the Judicial Chambers.

One of the important ways in which we have expedited these dependency appeals is through our contract attorney program. Our contract attorneys are generally former employees of our Research Division who have left the full-time employ of the Court, often to raise their families. The program is very cost-effective in that we pay our contract attorneys by the case and do not pay fringe benefits.

For FY 2008, we propose that the Court's contract attorney program be fully and separately funded. We estimate the cost to be \$250,000. With these increased costs, the cumulative expenditure increase will be approximately 7.81% over FY 2007 levels. (See Chart 12).

Chart 12
Base Case 3 Increases: Dollar Amounts
 - \$250,000 Contract Attorneys



(5) Elimination Of Sunset

In 2003 the Legislature approved increases for entry and motion fees for our Court. The entry fee increase was unlimited in time; the motion fee increases were to sunset in 2005. In 2005, the Legislature continued the motion fee increases through FY 2007. MCL 600.321(1)(b) currently provides for a motion fee of \$100.00. However, this fee will drop back to \$75.00 on October 1, 2007, if the sunset is not removed. Similarly, MCL 600.321(1)(c) currently provides for a motion fee of \$200.00 for motions for immediate consideration or motions to expedite appeals. However, this fee will drop back to \$150.00 on October 1, 2007, if the sunset is not removed. We estimate that the combined revenue effect of these “dropbacks” will be approximately \$101,000. In other words, if the two sunsets are not removed, the Court of Appeals will collect \$101,000 less in fees than it would collect if the sunsets were removed. We have submitted draft language to remove the sunsets and we have premised our budget calculations on the assumption that they will be removed.

(6) Comparison With DMB Budget

COA REVISED BUDGET

	<u>DMB Budget</u>	<u>COA Proposed Budget</u>
Gross Appropriation	20,236,400	21,147,536
Special Revenue	0	0
Court Filing/Motions	1,958,500	1,958,500 ³
Misc Revenue	77,800	77,800
Contract Attys GF/GP	0	250,000
GF/GP	18,200,100	18,861,236
Total Sources	20,236,400	21,147,536
Projected Expenditures	20,897,536	20,897,536 ⁴
Shortfall	(661,136)	250,000

IV. Conclusion

The conclusion is straight-forward and entirely negative: the only way in which the Court can accommodate a deficit of over \$650,000 is through drastic reductions in its discretionary personnel costs, including reductions in its staffing levels . . . and, of course, this does not take into account the effect of failing to make the contract attorney program both permanent and adequately funded. Even if the Court maintains its increased levels of efficiency and productivity, such reductions in staffing will make it impossible for the Court to achieve its delay reduction goals and will seriously impact its ability to serve the public. The DMB budget proposal before you for FY 2008 of an overall appropriation of \$20,236,400 will, in my view, have this result.

I should emphasize that the core mission of our Court is a dual one: to decide the cases that come before us with due deliberation and due speed. We have no other missions. We do not provide services (other than information to litigants); we do not make grants; we do not carry out programs; we do not engage in administrative functions relating to other elements of the judiciary; we do not undertake educational or training programs (other than internally); and our work product is strictly limited to the opinions and orders that we produce. It is important that we decide our cases correctly and promptly for, in the vast majority of cases, we are the court of last resort. Ours is a labor-intensive activity; approximately 90% of our expenditures are for personnel costs. It is therefore imperative that, to fulfill its core mission, the Court be adequately funded and staffed and that our staff be adequately compensated.

³ Includes elimination or delay of the extension of sunset provisions that will reduce the fees charged for motions.

⁴ Not including separate, permanent and full funding of the contract attorney program.

Let me conclude by emphasizing how strongly I believe that the litigants and attorneys appearing before our Court—indeed, all the people of Michigan—deserve nothing less than the full commitment of resources necessary to reach our delay reduction goal. We have made ourselves publicly accountable for the achievement of this goal. It is a goal that I know you share and over the last several years you responded when I asked for your help in meeting it. I am gratified that the Chief Justice, the Department of Management and Budget, the Governor, and, of course, the Legislature, have all recognized how important that goal is. This current DMB budget proposal will not, however, enable us to maintain our progress toward that goal.

Thank you and I will be more than happy to answer any questions that you may have.